



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,513	08/06/2002	Peter Brossart	WWELL52.001APC	8680
20995	7590	05/25/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			WHITEMAN, BRIAN A	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			1635	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/019,513	BROSSART ET AL.	
	Examiner	Art Unit	
	Brian Whiteman	1635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 11-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1, 11-34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1635

DETAILED ACTION

Claims 1 and 11-34 are pending.

The cancellation of claims 2-10 is acknowledged in the amendment filed in 8/6/02.

Claims 27, 28, 29, and 30 and claims dependent therefrom do not further limit the claim from which they depend from. Thus, claims 27, 28, 29, and 30 and claims dependent therefrom were placed into separate groups.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1 and 15, drawn to an isolated peptide comprising SEQ ID NO: 1.

Group II, claim(s) 11, 12, and 15, drawn to an isolated peptide comprising SEQ ID NO: 2.

Group III, claim(s) 13, 14, 16, and 19-20, drawn to a vector, a cell comprising a nucleic acid encoding SEQ ID NO: 1.

Group IV, claim(s) 13, 14, 16, and 19-20, drawn to a vector, a cell comprising a nucleic acid encoding SEQ ID NO: 2.

Group V, claim(s) 21 and 24, drawn to a method of tumor therapy comprising administering SEQ ID NO: 1.

Art Unit: 1635

Group VI, claim(s) 21 and 24, drawn to a method of tumor therapy comprising administering SEQ ID NO: 2.

Group VII, claim(s) 17, 18, 22, 23, 25 and 26, drawn to a method of tumor therapy comprising administering a nucleic acid encoding SEQ ID NO: 1.

Group VIII, claim(s) 17, 18, 22, 23, 25, and 26, drawn to a method of tumor therapy comprising administering a nucleic acid encoding SEQ ID NO: 2.

Group IX, claims 27, 29, 31, and 33, drawn to a method of treating a tumor in a subject comprising incubating a peptide comprising SEQ ID NO: 1 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

Group X, claims 27, 29, 31, and 33, drawn to a method of treating a tumor in a subject comprising incubating a peptide comprising SEQ ID NO: 2 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

Group XI, claims 28, 30, 32, and 34, drawn to a method of treating a tumor in a subject comprising incubating a nucleic acid comprising SEQ ID NO: 1 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

Group XII, claims 28, 30, 32, and 34, drawn to a method of treating a tumor in a subject comprising incubating a nucleic acid comprising SEQ ID NO: 2 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

The inventions listed as Groups I-XII do not relate to a single invention concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical features for the following reasons:

Art Unit: 1635

37 CFR 1.475(b) states:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

(2) A product and process of use of said product; or

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and an apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

37 CFR 1.475(c) states:

“If an application contains claims to more or less than one of the combination of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.”

37 CFR 1.475(d) also states:

“If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of

each other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and 1.476(c).”

37 CFR 1.475(e) further states:

“The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternative within a single claim.”

In view of 37 CFR 1.475 (b), 37 CFR 1.475 (c), 37 CFR 1.475 (d), and 37 CFR 1.475 (e), Group I is considered the main invention to the product first mentioned in the claims, and the first recited invention drawn to other categories related thereto, e.g. a method of making, method of use.

The technical feature linking groups I, V, and IX appear to be that they all relate to an isolated peptide comprising SEQ ID NO: 1.

However, Schlom et al. (WO 98/37095) teach an isolated peptide comprising SEQ ID NO: 1 (page 20). Therefore, the technical feature linking the inventions of groups I, V, and IX does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

The technical feature linking groups II, VI, and X and appear to be that they all relate to an isolated peptide comprising SEQ ID NO: 2.

However, Wreschner et al. (WO 96/03502) teach an isolated peptide comprising SEQ ID NO: 2 (Figure 8). Therefore, the technical feature linking the inventions of groups II, VI, and X does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

The special technical feature of Group I is considered to be SEQ ID NO: 1.

The special technical feature of Group II is considered to be SEQ ID NO: 2.

The special technical feature of Group III is considered to be a nucleic acid encoding SEQ ID NO: 1.

The special technical feature of Group IV is considered to be a nucleic acid encoding SEQ ID NO: 2.

The special technical feature of Group V is considered to be tumor therapy comprising SEQ ID NO: 1.

The special technical feature of Group VI is considered to be tumor therapy comprising SEQ ID NO: 2.

The special technical feature of Group VII is considered to be cancer gene therapy comprising a nucleic acid encoding SEQ ID NO: 1.

The special technical feature of Group VIII is considered to be cancer gene therapy comprising a nucleic acid comprising SEQ ID NO: 2.

The special technical feature of Group IX is considered to be a method of treating a tumor in a subject comprising incubating a peptide comprising SEQ ID NO: 1 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

The special technical feature of Group X is considered to be a method of treating a tumor in a subject comprising incubating a peptide comprising SEQ ID NO: 2 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

Art Unit: 1635

The special technical feature of Group XI is considered to be a method of treating a tumor in a subject comprising incubating a nucleic acid comprising SEQ ID NO: 1 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

The special technical feature of Group XII is considered to be a method of treating a tumor in a subject comprising incubating a nucleic acid comprising SEQ ID NO: 2 with antigen-presenting cells and then administering the antigen-presenting cells to the subject.

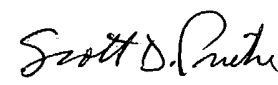
Accordingly, Group I-XII are not so linked by the same or a corresponding technical feature as to form a single general inventive concept.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Whiteman whose telephone number is (571) 272-0764. The examiner can normally be reached on Monday through Friday from 7:00 to 4:00 (Eastern Standard Time), with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, SPE - Art Unit 1635, can be reached at (571) 272-0760.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


SCOTT D. PRIEBE, PH.D
PRIMARY EXAMINER

Application/Control Number: 10/019,513

Page 8

Art Unit: 1635

Brian Whiteman

Patent Examiner, Group 1635